



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JUN 07 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

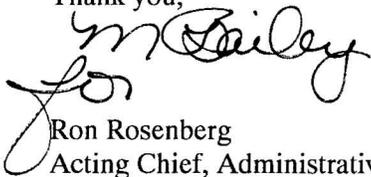
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director of the California Service Center recommended the denial of the nonimmigrant visa petition and certified the decision to the Administrative Appeals Office (AAO). Upon review, the AAO will affirm the decision of the director. The petition will be denied.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on April 11, 2012. The petitioner stated that it is a healthcare recruitment and placement business established in 2004. The petitioner further stated that it has 47 employees and that it has a gross annual income of approximately \$5.4 million but a net annual loss of approximately \$150,000.

Seeking to employ the beneficiary in what it designates as an international recruiter position, the petitioner filed this H-1B petition in an endeavor to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director found that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the statutory and regulatory provisions. The director recommended the petition be denied and certified the petition for review by the AAO on April 18, 2013. In response to the director's recommendation and certification, counsel submitted a brief and supporting documentation on May 16, 2013 asserting that the director's basis for denial of the petition was erroneous and that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's requests for additional evidence (RFE); (3) the petitioner's responses to the RFEs; (4) the director's denial letter; (5) the Notice of Certification; and (6) the petitioner's brief and supporting documentation submitted in response to the director's certification of the petition. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established that the proffered position qualifies as a specialty occupation. Accordingly, the decision certified to the AAO will be affirmed, and the petition will be denied.

The AAO will also address three additional, independent grounds, not identified by the director's decision, that preclude approval of this petition. Specifically, beyond the recommended decision of the director, the AAO finds that the petitioner (1) failed to properly file the Form I-129 petition and the Labor Condition Application (LCA), because they have not been signed by an authorized official of the petitioner as defined by the regulations; (2) failed to submit an LCA that corresponds to the petition; and (3) failed to establish that it would pay an adequate salary for the beneficiary's work, as required under the applicable statutory and regulatory provisions. Thus, the petition cannot be approved for these reasons as well.¹

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

I. Factual and Procedural Background

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as an international recruiter to work on a full-time basis at a rate of pay of \$13.72 per hour. In a support letter dated April 10, 2012, the petitioner stated the following regarding the duties and responsibilities of the proffered position:

In this position the Beneficiary will be responsible for international candidate screening, recruiting, processing, arrival support and ongoing management of assigned international candidates. Beneficiary will seek out, interview and screen applicants to fill existing and future job openings and promote career opportunities with the organization. Beneficiary will be responsible for candidate sourcing, processing and engagement as well as the development and support of job orders. Beneficiary will make placements, matching candidates to open opportunities, and perform all necessary human resource functions for placements.

In its letter of support accompanying the initial I-129 petition, the petitioner stated that "an individual would need, at a minimum, a Bachelor's Degree or its equivalent to perform the duties of the proffered position." The petitioner indicated that the beneficiary has attained the equivalent of a U.S. master's degree in business administration. The petitioner provided copies of the beneficiary's foreign diplomas and transcripts, and an undated evaluation of the beneficiary's credentials prepared by International Credentials Evaluation and Translation Services indicating that the beneficiary has attained the U.S. equivalent of a bachelor's degree in business administration. The petitioner did not provide an explanation as to why it believed that the beneficiary had attained the equivalent of a U.S. master's degree in business administration.

In support of the Form I-129 petition, the petitioner also submitted (1) an undated document entitled "Limited Power of Attorney"; (2) a letter dated April 10, 2012, purportedly signed by the petitioner's executive vice president, offering employment to the beneficiary to begin October 1, 2012; and (3) documents related to the beneficiary's L-2 nonimmigrant status.

In addition, the petitioner submitted an LCA in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification SOC (ONET/OES Code) 13-1078, "Human Resources, Training, and Labor Relations Specialists, All Other," at a Level I (entry level) wage.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on August 7, 2012. The director outlined the evidence to be submitted. The AAO notes that the director specifically requested that the petitioner submit probative evidence to establish that the proffered position qualifies as a specialty occupation and that the beneficiary is qualified to perform services in a specialty occupation position.

On October 3, 2012, counsel responded to the director's RFE by providing a letter and additional evidence, including (1) a job description for the proffered position; (2) the beneficiary's resume; (3) a printout from the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook's*

(Handbook) chapter entitled "Human Resources Specialists"; (4) a printout of the Occupational Information Network (O*NET) OnLine Summary Report for the occupation "Human Resource Specialists"; (5) printouts of several online job postings; (6) printouts of job advertisements for the petitioner's positions of "Corporate Recruiter/HR Manager" and "High Performing Locum Tenens Recruiter"; (7) a letter and curriculum vitae from [REDACTED]; (8) a letter (dated August 29, 2012) and curriculum vitae from [REDACTED]; (9) a letter dated January 30, 2012 from [REDACTED] of [REDACTED] University and a printout of the [REDACTED] University 2011-2012 Undergraduate Catalog faculty listing; (10) a letter dated October 5, 2011 offering employment to the beneficiary to begin October 10, 2011; (11) printouts from the petitioner's website; and (12) unsigned copies of the petitioner's 2010 and 2011 federal tax returns. No explanation was provided regarding the letter dated October 5, 2011 offering the beneficiary employment. The AAO observes that this letter, which predates the April 10, 2012 employment offer letter by six months, offers the beneficiary a different start date, a lower rate of pay, and a different benefits package than the previous letter, and bears a different signature (for the petitioner's authorized official) than the letter submitted with the initial Form I-129 petition.

In response to the RFE, the petitioner submitted a revised description of the proffered position. The description of the proffered position provided by the petitioner indicates that the title of the position is "International Recruiter (International Recruitment Manager)." In the document, the petitioner describes the "essential duties and responsibilities" of the proffered position as follows:

I. RECRUITING

A. Candidate Sourcing [20%] – Collaborate with Company marketing personnel to develop print and internet campaign strategies to generate prospective candidates and additional sources of candidate referrals:

- Create search agents to search Internet databases for qualified candidates and potential sources of referrals.
- Communicate a branded message in strategically selected discussion forums and chat rooms.
- Develop (in coordination with Marketing department personnel) and execute personalized email campaigns to databases (internal and external) including professional membership organizations.
- Develop networking strategies utilizing existing and prospective employee database.
- Network with placement offices of strategic referral sources including associations, immigrant health professional networks, local colleges and technical schools. Promote the Company's programs as an alternative employer and visa sponsor. This may include interfacing with Department Chairman and University leadership (including Provost's office.)
- Develop branded messages and lead the participation in job fairs and conferences with a goal of recruiting candidates and developing a robust database of candidates for future referrals.

B. Candidate Processing Management [25%]

- Develop processes and procedures to receive and respond to incoming

international candidate inquiries from international advertising campaigns and website applications.

- Develop processes and procedures to conduct phone screen s/ Interviews potential applicants and educate them about the Company's programs and opportunities.
- Assess the "fit" of applicants for specific job opportunities.
- Administer and develop protocols for conducting competency testing for by specialty and provide mandatory OSHA training and testing with computerized or written tests as appropriate.
- Manage, motivate and ensure completion of employment and license verifications, license applications, credential evaluations, visa application documents, reference and criminal background checks, drug tests, mandatory vaccinations and physical exam. Master relevant licensure law and be able to appear before and petition Boards of Therapy and Nursing as necessary.
- Develop processes and procedures to ensure complete applicant and client files and maintain applicant and client computer/paper files and filing systems.
- Promote licensure testing preparation best practices and vet and engage subject matter experts to the extent necessary.
- Develop or possess deep understanding of licensure and immigration as they relate to international candidate placement and employment. Position will require daily candidate-by-candidate state licensure, visa screen, and other immigration or licensure related investigation.
- Collaborate with licensing, immigration, records, and quality assurance staff members to ensure effective and timely processing for placed health professionals.
- Manage subcontractor and vendor relationships to develop candidate pipelines and maximize profitable placements.
- Plan for and coordinate logistics of meet and greet activities for international healthcare professionals arriving in the US, including assistance in acclimation to living in US and provide support to newly arrived international contract professionals.
- Troubleshoot performance issues with placed/assigned healthcare professionals. Vet and deploy the services of professional preceptors if necessary.
- Communicate with assigned healthcare professionals regularly to monitor progress and assist in problem-solving where appropriate.
- Reinforce the Company's value proposition with healthcare professionals.

C. Candidate Engagement [10%]

- Generate and manage a pool of assignment-ready candidate pipeline/inventory (ensure all documents and applications are completed) that can be marketed to prospective clients.

- Maintain periodic contact with candidates not currently on assignment.
 - Maintain periodic contact with active placements.
 - Solve candidate and assignment specific challenges, including interfacing with client professional staff as directed by the Director of International Recruitment.
 - Monitor candidate's professional development and on-going continuing professional education.
 - Ensure state-required professional education standards are met.
 - Work with current and former candidates and placements to generate referrals.
- D. Develop and Support Job Orders [10%]
- Assist marketing personnel with the development and maintenance of a Candidate Availability. Report which can be used to stimulate interest in new business relationships with the Company.
- E. Coordinate Making Placements [10%]
- Interface with Company International Recruitment and Sales Management to match candidates and opportunities.
 - Place candidates coming off assignments on to new assignments with minimal to no bench time.
 - Persuade candidates to pursue specific opportunities; prudently expand their assignment preferences to include available opportunities.
 - Place Healthcare Associates on assignments in a timely manner.
 - Attend conferences, job fairs, and other company/client-sponsored events. Network with industry leaders.
- F. Human Resources [15%]
- Perform all necessary Human Resources functions for Placements:
 - Verify timecards and resolve payroll issues.
 - Resolve benefits issues.
 - Verify qualification for and request payment of all bonuses.
 - Verify qualification for and request for reimbursements.
 - Secure assignment evaluations to use as a basis for performance review.
 - Take/document disciplinary action as necessary.
 - Maintain a thorough working knowledge of all applicable federal, state and local government, accrediting agency, and client specific contractual requirements/regulations/laws including OSHA, HIPPA, state health professional and immigration.
 - Maintain positive relationships with employees and coworkers.
 - Provide assistance to other departments as requested.
- G. Systems [10%]
- Use and enhance company systems to effectively recruit and retain candidates, and manage submittals and placements.
 - Identify ways to utilize existing systems to improve recruiting speed, productivity, success, etc.

In addition to providing the above duties of the proffered position, the job description submitted by the petitioner provides the following requirements for the proffered position:

II. QUALIFICATIONS

- 4 Year degree in Business, Human Resources or Communications and/or possess relevant experience;
- Strong proficiency in technology skills, including:
 - Required: MS Office (Word, Excel, PowerPoint), Internet and Email
 - Preferred: MS Access or other database, MS Visio, Contact management software (Salesforce.com/ACT)
- 2+ years of previous healthcare staffing / sales / account management, C-level professional service or related experience required

The director reviewed the information provided by the petitioner. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on October 17, 2012.

Thereafter, the director reopened the petition on its own motion, and sent the petitioner a request for additional evidence on March 12, 2013. The AAO observes that the director notified the petitioner of the deficiencies in the petition and offered the petitioner an opportunity to submit additional evidence. The director outlined the evidence to be submitted.

On March 28, 2013, the petitioner and counsel responded to the director's RFE by providing (1) a letter; (2) an affidavit from [REDACTED], the petitioner's Director of International Recruitment; and (3) copies of previously submitted documents. The director reviewed the evidence submitted by the petitioner, but found that it failed to overcome the evidentiary deficiencies in the record of proceeding. The director prepared a recommended decision denying the petition, and certified the petition to the AAO on April 18, 2013. In response to the director's recommended decision, counsel for the petitioner submitted (1) a brief; (2) a Form G-28 (Notice of Entry of Appearance as Attorney or Representative); (3) a printout from O*NET OnLine entitled "O*NET OnLine Help: Specific Vocational Preparation (SVP)"; and (4) copies of previously submitted documents.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. As previously noted, the AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d at 145. Based upon a complete review of the record of proceeding, the AAO will make some preliminary findings that are material to the determination of the merits of this petition.

II. Issues Not Addressed By the Director's Recommended Decision

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

As a preliminary matter, the AAO notes that even if the petitioner were to overcome the grounds for the director's recommendation of the denial of the petition (which it has not), it could not be found eligible for the benefit sought as there are additional issues that preclude the approval of the H-1B petition.

A. Improper Filing of Form I-129 Petition

More specifically, upon review of the record, the AAO concludes that the petitioner failed to properly file the Form I-129 petition and LCA, as the documents have not been signed by the petitioner's authorized official.² Because the petition has not been properly filed, there is no valid proceeding upon which to base the director's recommendation for denial and the certification for review.

The AAO notes that the Form I-129 petition, the Form G-28, and the LCA do not bear the signature of the petitioner's authorized official. Significantly, someone other than the petitioner's authorized official attempted to sign the visa petition under penalty of perjury on behalf of the petitioning employer.

The AAO observes that the record contains a document, submitted with the Form I-129 petition, entitled "Limited Power of Attorney." The document is neither dated nor notarized. It is signed by [REDACTED] the petitioner's executive vice president. The document states the following:

I, [REDACTED], Executive Vice President, [the petitioner], [petitioner's former address], hereby make [REDACTED] Attorney-at-Law, [REDACTED], my attorney in fact to do the following on my behalf as it relates to all immigration legal work:

Approve and sign any and all documentation required in connection with The Department of Homeland Security, United States Citizenship and Immigration Services, The Department of Labor or any Federal agency, presented through our attorneys, [REDACTED] on behalf of [the petitioner], II, and/or its employees requiring immigration documentation or process. I give [REDACTED] and any Attorney or Legal Assistant or employee of [REDACTED] the authority to perform any act necessary to fulfill this

² As will be discussed, while [REDACTED] did not properly file the instant petition, all references to the "petitioner" in this decision refer to this entity.

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power of attorney, with the full power of substantiation and revocation. I ratify that [REDACTED] or his substitute shall lawfully due pursuant to this power of attorney.

However, as will be discussed, this document does not meet the signature requirements of any of the controlling U.S. Citizenship and Immigration Services (USCIS) regulations. The AAO further observes that neither Form G-28 filed in this case appears to have been personally signed by the petitioner's authorized official.

The regulation at 8 C.F.R. § 292.4(a) provides (emphasis added):

An appearance must be filed on the appropriate form as prescribed by DHS by the attorney or accredited representative appearing in each case. *The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. . . .* When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature will constitute a representation that under the provisions of this chapter he or she is authorized and qualified to appear as a representative as provided in 8 C.F.R. 103.2(a)(3) and 292.1. Further proof of authority to act in a representative capacity may be required.

The regulation at 8 C.F.R. § 103.2(a)(3) provides that where a notice of representation on Form G-28 is "not properly signed, the benefit request will be processed as if the notice had not been submitted."³

In this case, the Forms G-28 accompanying both the Forms I-129 and the brief filed directly with the AAO were not signed by an employee or officer of the petitioning entity. Instead, both forms were signed on behalf of the petitioning entity by another individual.⁴ The Form I-129 petition

³ Not only does the petitioner's signature on the Form G-28 authorize representation by an attorney or accredited representative in matters before USCIS, it serves as a consent to disclosure of information covered under the Privacy Act of 1974. The Immigration and Naturalization Service (legacy INS) first implemented the requirement that a petitioner or applicant sign the Form G-28 in the final rule "Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits" 59 Fed. Reg. 1455 (Jan. 11, 1994). In response to several commenters who suggested that the attorney need be the only signatory on the Form G-28, the agency explained that other commenters had properly noted that capture of the petitioner's signature on the Form G-28 "would address potential Privacy Act concerns." *Id.* at 1455. The agency emphasized that the "petitioner must sign the Form G-28 to definitively indicate to the Service that he or she has authorized the person to represent him or her in the proceeding." *Id.*

⁴ The AAO notes that the signature of [REDACTED] varies substantially throughout the record. The AAO observes that none of the signatures of [REDACTED] on the Form G-28, the Form I-129 petition, or the LCA match that of the signature provided on the document entitled "Power of Attorney." The AAO further notes that the Form I-129 and the concurrently submitted Form G-28 appear to have been signed by someone other than the petitioner's purported counsel. Specifically, these forms bear the initials "CTM" instead of the attorney's signature, which appears elsewhere in the record.

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identifies [REDACTED] as the petitioner. In this instance, no employee or officer of [REDACTED] ([REDACTED]) signed the Form I-129.

Based on a review of the record, the AAO observes that the signatures on the visa petition and accompanying documents (including the petitioner's statement and an offer of employment to the beneficiary) do not match the signature of the petitioner's authorized official as it appears on the "Power of Attorney." The AAO notes that even if counsel had completed the Form I-129 on behalf of the petitioner in good faith pursuant to what he believed to be a valid "Power of Attorney," the signed document should have reflected that it was signed on behalf of the petitioner, instead of bearing a false signature. It is evident that someone other than the petitioner's authorized official signed the Form I-129 (pages 6, 7, and 12), in the blocks provided for the signature of the petitioner/authorized official of the employer, thereby seeking to file the petition on behalf of what is purported to be the actual United States employer. However, the regulations do not permit any individual who is not the petitioner to sign the Form I-129.

The regulation at 8 C.F.R. § 103.2(a)(2) provides:

Signature. An applicant or petitioner must sign his or her benefit request. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the benefit request, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an [sic] benefit request that is being filed with the USCIS is one that is either handwritten or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. As will be discussed in more detail below, the requirement for a signature *under penalty of perjury* cannot be met by a "Power of Attorney" authorized signature. Practically, the signature requirement reflects a genuine Form I-129 program concern regarding the validity of the temporary job offer contained in Form I-129 petition. To this end, the employer's signature serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. This concern is illustrated by the instant case. Here, the record contains two conflicting offers of employment, which bear different signatures of the same individual, purportedly signing on behalf of the petitioner. The letters contain discrepancies regarding facts that are material to USCIS's adjudication of the Form I-129 petition, including the date the employment will commence, the salary and benefits offered, and other terms to which the beneficiary may agree, such as the duties and responsibilities associated with the proffered position. USCIS is not in a position to speculate as to which is the "true" offer of employment, and why there are conflicting offers of employment in the record.

The signature line on the Form I-129 for the petitioner provides that the petitioner is certifying, "under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." To be valid, 28 U.S.C. § 1746 requires that declarations be "subscribed" by the declarant "as true under penalty of perjury." In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: "Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury."

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration "for" another. Without the petitioner's actual signature as declarant, the declaration is completely robbed of any evidentiary force. See *In re Rivera*, 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

The AAO notes that an entirely separate line exists for the signature of the preparer declaring that the form is "based on all information of which [the preparer has] any knowledge." Thus, the Form I-129 petition acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Moreover, the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney's unsupported assertions on the petition and (and potentially in the offer of employment) have no evidentiary value even if they are alleged on behalf of the petitioner via a power of attorney.

The AAO notes that the integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign all petitions, notices of appearance (for the same attorney), appeals, and all DOL applications on behalf of the petitioner based on a broad assignment of authorization would leave the immigration system open to fraudulent filings. The AAO notes prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the alien or employer had no knowledge. *United States v. O'Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

The AAO further notes that even if USCIS were to allow attorneys to complete entire Form I-129 petitions on behalf of a true employer (which it does not), the "Limited Power of Attorney" in this case does not appear to be a valid document pursuant to the laws of Ohio. A review of the Ohio revised code indicates that "[a] signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments." Ohio Rev. Code Ann. § 1337.25 (West 2013). The AAO observes that the document in the record entitled "Limited Power of Attorney" is not notarized.⁵

⁵ The AAO notes that under current Ohio law, a "Power of Attorney" executed in Ohio "on or after the

As the underlying petition in this case was not properly filed, further action on the petition cannot be pursued. If the petitioner wishes to pursue H-1B classification for the beneficiary, it may file a new, properly executed Form I-129 accompanied by the required filing fee and supporting evidence for consideration by USCIS.

In the instant case, although the director reviewed the petition based on its merits, the AAO notes that the petition was improperly filed, and thus should have been rejected by the director at the time of filing. That is, pursuant to 8 C.F.R. § 103.2(a)(7), a petition which is not properly signed shall be rejected as improperly filed, and no receipt date assigned to the petition. The AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Thus, while the California Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Accordingly, the AAO finds that the instant petition must be denied because the petitioner failed to properly file the petition and LCA.

B. The LCA Filed in the Instant Matter Does Not Correspond to the Petition and Fails to Establish that the Petitioner will Pay an Adequate Salary

Even if the petition has been properly filed (which it was not), there are additional issues that preclude its approval. When determining whether a position is a specialty occupation, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

The AAO observes that the LCA filed in support of this Form I-129 petition was certified at a Level I (entry level) wage. Wage levels should be determined only after selecting the most relevant O*NET code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation

effective date of this section [March 22, 2012] is valid if its execution complies with section 1337.25 of the Revised Code [cited above]." Ohio Rev. Code Ann. § 1337.25(A) (West 2013). The AAO observes that the "Limited Power of Attorney" in the instant case does not bear a date. Notably, it was submitted with the Form I-129 petition, which was filed with USCIS on April 11, 2012.

(education, training and experience) generally required for acceptable performance in that occupation.⁶

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.⁷ DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received as indicated by the job description.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

The AAO observes that although the petitioner designated the proffered position as a Level I entry-

⁶ For additional information on wage levels, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁷ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

level position, the petitioner has represented that prior experience is required to perform the duties of the proffered position. Specifically, in the position description provided in response to both of the director's RFEs, the petitioner indicated that in addition to the requirement of a "4 Year degree in Business, Human Resources or Communications and/or . . . relevant experience," the position requires "2+ years of previous healthcare staffing / sales /account management, C-level professional service or related experience." The petitioner's director of international recruiting confirmed this experience requirement in her affidavit, submitted in response to the director's RFE. Further, in support of the petition, the petitioner provided an opinion letter from [REDACTED] professor of marketing at [REDACTED]. The AAO notes that counsel and the petitioner rely heavily on this letter to support their assertions. [REDACTED] stated that in his "professional opinion," the proffered position "requires a sophisticated understanding of staffing, human resources, consulting, healthcare occupations, and management." In a letter dated May 15, 2013, counsel asserts that "the Petitioner requires a *much* higher level of skill, training and attention to detail" than that required of a typical human resources specialist. The amount of experience and level of skill required to perform the duties of the proffered position is at odds with the wage-rate selected by the petitioner. Here, the petitioner has classified the proffered position at a Level I wage, which is appropriate for a position requiring only "a basic understanding of the occupation" expected of a "worker in training" or an individual performing an "internship."

Further, the petitioner's designation of the proffered position at a Level I wage-rate indicates that the beneficiary will be expected to "perform routine tasks that require limited, if any, exercise of judgment." However, in a letter dated May 15, 2013, counsel emphasizes that the description of the proffered position indicates that the "Petitioner requires the Beneficiary not only to find, screen and interview candidates, but to also enhance company systems to effectively recruit and retain candidates." Counsel further states that "the proffered position requires the Beneficiary to identify ways to use existing systems to improve recruiting processes." (Emphasis in the original). Counsel suggests that the beneficiary will be required to exercise extensive independent judgment in the proffered position. Notably, the AAO observes that this appears to conflict with the Level I designation.

In addition, in a letter dated April 10, 2012, the petitioner stated that in the proffered position, the beneficiary will "seek out, interview and screen applicants to fill existing and future job openings." The petitioner also indicated that the beneficiary will be "responsible for candidate sourcing, processing and engagement[,] as well as the development and support of job orders." The petitioner further asserted that the beneficiary will "make placements, matching candidates to open opportunities, and perform all necessary human resources functions for candidates." The AAO notes that in the Form I-129 petition, the petitioner described itself as a "Healthcare Recruitment & Placement" business. In a letter dated October 1, 2012, counsel asserts that "the Beneficiary is responsible for developing and executing several programs key to the success of Petitioner's recruitment, retention and management of international healthcare staff." Counsel further claims that the "Beneficiary's work is instrumental in and critical to the success of Petitioner and its clients." Such reliance on the beneficiary's work appears to surpass the expectations of a Level I position, as described above, where the employee works under close supervision, performing routine tasks that require only a basic understanding of the occupation and limited exercise of judgment. Here, rather than the beneficiary's work being "monitored and reviewed for accuracy,"

the petitioner is allegedly relying on the accuracy of the beneficiary's work for the success of mission-critical areas of the petitioner's business operations.

Thus, upon review of the assertions made by the petitioner, the AAO must question the level of complexity, independent judgment and understanding actually required for the proffered position as the LCA is certified for a Level I entry-level position. This characterization of the position and the claimed duties and responsibilities as described by the petitioner conflict with the wage-rate element of the LCA selected by the petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, the selected wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A); *Patel v. Boghra*, 369 Fed.Appx. 722, 723 (7th Cir. 2010). The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). See 65 Fed. Reg. 80110, 80110-80111 (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL]").

The AAO notes that the prevailing wage of \$13.72 per hour (\$28,538 per year) on the LCA corresponds to a Level I position for the occupational category of "Human Resources, Labor Relations, and Training Specialist, All Others" for Hamilton County (Cincinnati, OH).⁸ Notably, if the proffered position had been designated at a higher level, the prevailing wage at that time would have been \$41,538 per year for a Level II position, \$54,517 per year for a Level III position, and \$67,517 per year for a Level IV position.

The petitioner was required to provide, at the time of filing the H-1B petition, an LCA certified for the correct wage level in order for it to be found to correspond to the petition. To permit otherwise would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, by allowing that petitioner to simply submit an LCA for a different wage level at a lower prevailing wage than the one that it claims it is offering to the beneficiary. Therefore, the petitioner

⁸ For additional information regarding the prevailing wage for "Human Resources, Labor Relations, and Training Specialists, All Others" in Cincinnati, Ohio, see the All Industries Database for 7/2011 - 6/2012 for "Human Resources, Labor Relations, and Training Specialists, All Others" at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatabase.com/OesQuickResults.aspx?code=13-1078&area=17140&year=12&source=1> (last visited June 6, 2013).

has failed to establish that it would pay an adequate salary for the beneficiary's work, as required under the Act, if the petition were granted for a higher-level and more complex position as claimed elsewhere in the petition.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

Certification by the Department of Labor [DOL] of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, provided the proffered position was in fact found to be a higher-level and more complex position as claimed elsewhere in the petition, the petitioner would have failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position; that is, specifically, the LCA submitted in support of the petition would then fail to correspond to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance with section 212(n)(1)(A) of the Act and the pertinent LCA regulations.

The statements regarding the claimed level of complexity, independent judgment and understanding required for the proffered position are materially inconsistent with the certification of the LCA for a Level I, entry-level position. This conflict undermines the overall credibility of the petition. The AAO finds that, fully considered in the context of the entire record of proceedings, the petitioner failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

As such, a review of the enclosed LCA indicates that the information provided therein does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such higher level work and responsibilities, which if accepted as accurate would result in the beneficiary being offered a salary below that required by law. As a result, even if it were determined that the proffered position were a higher-level and more complex position as described and claimed elsewhere in the petition in support of the petitioner's assertions that this position qualifies as a specialty occupation, the petition could still not be approved for these two additional reasons.⁹

III. Review of the Director's Recommended Decision

The AAO will now address the basis for the director's recommended denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO agrees with the director that the evidence fails to establish that the position as described constitutes a specialty occupation.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and

⁹ Fundamentally, it appears that (1) the petitioner previously claimed to DOL that the proffered position is a Level I, entry-level position to obtain a lower required wage; and (2) the petitioner is now claiming to USCIS that the position is a higher-level and more complex position in order to support its claim that the position qualifies as a specialty occupation. The petitioner cannot have it both ways. Either the position is more senior and complex (based on a comparison of the employer's job requirements to the standard occupational requirements) and thereby necessitates a higher required wage or it is an entry-level position for which the lower wage offered to the beneficiary in this petition is acceptable. To permit otherwise would be directly contrary to the U.S. worker protection provisions contained in section 212(n)(1)(A) of the Act and its implementing regulations.

- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in

accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

Based upon a complete review of the record of proceeding, the AAO will first make some preliminary findings that are material to the determination of the merits of this petition. In the instant case, the petitioner has provided inconsistent information regarding the requirements of the proffered position. Furthermore, the petitioner's statements regarding the academic requirements for the international recruiter position do not establish that the position qualifies as a specialty occupation.

More specifically, in its initial letter of support dated April 12, 2012, the petitioner described the minimum requirements for the proffered position as "a Bachelor's degree or equivalent" (no specific specialty or discipline). In response to the RFE, the petitioner provided a document entitled "Job Description" for the proffered position, which indicates that the minimum education requirement for the proffered position is a "4 Year degree in Business, Human Resources or Communications and/or possess relevant experience." In response to the director's second RFE, the petitioner submitted an affidavit from the petitioner's director of international recruitment, in which she states that the "experience requirement is meant as an indication that [the petitioner] will except the equivalent of a U.S. bachelor's degree where a credentialing agency has reviewed the applicant's education and/or experience and found it to be equivalent to a U.S. bachelor's degree . . . or greater."

The AAO finds that these statements do not indicate that the petitioner requires a bachelor's degree or *its equivalent* as contemplated by statutory and regulatory guidelines. That is, the petitioner provided a job description which indicates that the petitioner will accept an unspecified amount of "relevant experience" in lieu of a degree. The petitioner later represented that the amount of "relevant experience" deemed sufficient to perform the duties of the proffered position would be the amount determined by a "credentialing agency" to be equivalent to a bachelor's degree. The petitioner did not indicate what standard would be used by such a credentialing agency to determine equivalency, or provide any examples of past instances where an evaluation of a prospective employee's work experience had been accepted in lieu of education. The petitioner did not provide any evidence in support of its claim.

The AAO notes that when assessing whether a beneficiary's work experience is properly deemed equivalent to a U.S. bachelor's degree, USCIS does not accept determinations by credentialing agencies. Rather, in determining whether a petitioner has demonstrated that a beneficiary has attained "experience in the specialty equivalent to the completion of [a U.S. bachelor's] degree," as required by section 214(i)(2)(c)(i) of the Act, 8 U.S.C. § 1184(i)(2)(c)(i), and 8 C.F.R. § 214.2(h)(4)(iii)(c)(4),¹⁰ USCIS either accepts "an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience" pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) or makes its own assessment pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).¹¹ Where USCIS makes its own assessment of the beneficiary's credentials, a specific formula of three years of experience for each year of missing education is employed as part of that determination.¹² In any event, the AAO observes that (1) the

¹⁰ It is noted that this criterion is the first prong in a two part test. The second prong at section 214(i)(2)(c)(ii) as implemented by 8 C.F.R. § 214.2(h)(4)(iii)(c)(4) also requires that the petitioner establish that the beneficiary has "recognition of expertise in the specialty through progressively responsible positions" directly related to the specialty.

¹¹ The AAO notes that there are additional avenues to demonstrate equivalency of a U.S. bachelor's degree in a specific specialty from a regionally accredited university, which do not involve an assessment of work experience. These include obtaining an evaluation of a beneficiary's foreign education from a reliable credentialing organization, presenting the results of recognized college-level equivalency examinations or special credit programs, or providing evidence of certification or registration from a nationally-recognized professional association or society for the specialty that meets certain standards. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(2),(3), and (4).

¹² In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or

petitioner has not indicated any standards by which a credentialing agency would evaluate a prospective employee's prior work experience to determine whether it is equivalent to a U.S. bachelor's degree in a specific specialty; (2) the petitioner has also failed to indicate that any such standard would necessarily include a requirement for "recognition of expertise in the specialty through progressively responsible positions directly related to the specialty" as required in pertinent part by 8 C.F.R. § 214.2(h)(4)(iii)(c)(4); and (3) it has provided conflicting information regarding the degree held by the beneficiary in the instant case.¹³ Thus, the AAO finds that the petitioner has not established that its minimum education requirement for a "4 Year degree in Business, Human Resources or Communications and/or possess relevant experience" indicates a requirement for the "equivalent" of a U.S. bachelor's degree as contemplated by the Act and its implementing regulations.

Further, the AAO finds that even if the petitioner had established that it requires a bachelor's degree or its equivalent to perform the duties of the proffered position, the petitioner has not established that the degree must be in a *specific specialty*. That is, in its initial letter of support, dated April 12, 2012, the petitioner described the minimum requirements for the proffered position as "a Bachelor's degree or equivalent." In response to the RFE, the petitioner provided a document entitled "Job Description" for the proffered position, which indicates that the minimum education requirement for the proffered position is a "4 Year degree in Business, Human Resources or Communications and/or possess relevant experience." The AAO notes that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the position. See 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the duties and responsibilities of the position in question. Since there must be a close correlation between the required specialized studies and the position, the

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- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

¹³ The AAO notes that the petitioner initially provided an evaluation by a credentialing agency in support of the Form I-129 petition, which states that the beneficiary has attained the equivalent of a U.S. Bachelor of Business Administration. In its letter of support dated April 10, 2012, however, submitted simultaneously with the evaluation, the petitioner indicates that the beneficiary attained a master's degree in business administration. The petitioner did not indicate how it came to this conclusion. The AAO notes that the letters from [REDACTED] (which conclude that the beneficiary holds the equivalent of a U.S. master's degree) were obtained subsequent to the petitioner's determination that the beneficiary has attained the equivalent of a master's degree and were submitted in response to the director's first RFE. However, in a letter also submitted in response to the director's RFE, along with the two opinion letters that conclude that the beneficiary possesses the equivalent of a master's degree, counsel indicated that the beneficiary has attained the equivalent of a *bachelor's* degree in business administration. Thus, the record of proceeding contains conflicting claims regarding the degree held by the beneficiary and the petitioner has demonstrated no standard by which it determines what combination of work experience and/or education is equivalent to a particular U.S. degree.

requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988); *see Palace Wine and Spirits, Inc. v. U.S. Citizenship & Immigration Service*, No. 11-402, 2012 U.S. Dist. WL 1901331, at *4 (D. Minn. May 25, 2012) (noting that the evidence in the record did not compel findings contrary to those made by USCIS, including the determination that "the requirement of a degree with a generalized title, such as management or business administration with an emphasis in management, without further specification, does not establish [a] position as a specialty occupation").

To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.¹⁴

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree. That is, the petitioner first indicated that a bachelor's degree (no specific discipline) is acceptable and, thereafter, claimed that a degree in business administration is sufficient for the proffered position. The petitioner's assertions are tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

The AAO now turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). As previously noted, for an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the

¹⁴ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* the following:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

applicable statutory and regulatory requirements. The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position.

The petitioner stated that the beneficiary would be employed in an international recruiter position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, the specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹⁵ In a letter dated October 1, 2012, submitted in response to the director's first RFE, counsel agreed that the proffered position is "most closely aligned" with the occupation of "Human Resources Specialists."

The AAO reviewed the chapter of the *Handbook* entitled "Human Resources Specialists," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Human Resources Specialists" comprise an occupational group for which at least a bachelor's degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry.

The subchapter of the *Handbook* entitled "What Human Resources Specialists Do" provides the following description of the duties of these positions:

Human resources specialists recruit, screen, interview, and place workers. They also may handle human resources work in a variety of other areas, such as employee relations, payroll and benefits, and training.

Duties

Human resources specialists typically do the following:

- Consult with employers to identify employment needs and preferred qualifications
- Interview applicants about their experience, education, training, and skills

¹⁵ All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

- Contact references and perform background checks on job applicants
- Inform applicants about job details, such as duties, benefits, and working conditions
- Hire or refer qualified candidates for employers
- Conduct or help with new employee orientation
- Keep employment records and process paperwork

Many specialists are trained in all human resources disciplines and do tasks throughout all areas of the department. In addition to recruiting and placing workers, these specialists help guide employees through all human resources procedures and answer questions about policies. They often administer benefits, process payroll, and handle any associated questions or problems. They also ensure that all human resources functions comply with federal, state, and local regulations.

The following are types of human resources specialists:

Employment interviewers work in an employment office and interview potential applicants for job openings. They then refer suitable candidates to employers for consideration.

Human resources generalists handle all aspects of human resources work. They may have duties in all areas of human resources including recruitment, employee relations, payroll and benefits, training, and administration of human resources policies, procedures, and programs.

Labor relations specialists interpret and administer a labor contract, regarding issues such as wages and salaries, employee welfare, healthcare, pensions, and union and management practices. They also handle grievance procedures, which are a formal process through which employees can make complaints.

Placement specialists match employers with qualified jobseekers. They search for candidates who have the skills, education, and work experience needed for jobs, and they try to place those candidates with employers. They also may help set up interviews.

Recruitment specialists, sometimes known as **personnel recruiters**, find, screen, and interview applicants for job openings in an organization. They search for job applicants by posting job listings, attending job fairs, and visiting college campuses. They also may test applicants, contact references, and extend job offers

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Human Resources Specialists," <http://www.bls.gov/ooh/Business-and-Financial/Human-resources-specialists.htm#tab-2> (last visited June 6, 2013).

The AAO agrees with counsel and the director that the duties of the proffered position are akin to those of a human resources specialist. The subchapter of the *Handbook* entitled "How to Become a Human Resources Specialist" states in pertinent part the following about this occupational category:

Most positions require that applicants have a bachelor's degree. However, the level of education and experience required to become a human resources specialist varies by position and employer.

Education and Work Experience

Most positions require a bachelor's degree. When hiring a human resources generalist, for example, most employers prefer applicants who have a bachelor's degree in human resources, business, or a related field.

Although candidates with a high school diploma may qualify for some interviewing and recruiting positions, employers usually require several years of related work experience as a substitute for education.

Some positions, particularly human resources generalists, may require work experience. Candidates often gain experience as human resources assistants, in customer service positions, or in other related jobs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Human Resources Specialists, on the Internet at <http://www.bls.gov/ooh/Business-and-Financial/Human-resources-specialists.htm#tab-4> (last visited June 6, 2013).

When reviewing the *Handbook*, the AAO must again note that the petitioner designated the wage level of the proffered position as a Level I position on the LCA. As previously discussed, this designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. In accordance with the relevant DOL explanatory information on wage levels, the beneficiary will be closely supervised and her work closely monitored and reviewed for accuracy. Furthermore, she will receive specific instructions on required tasks and expected results. Thus, the petitioner has not established that the beneficiary will serve in a high-level or leadership position.

The *Handbook* does not state that a baccalaureate or higher degree, in a specific specialty, or its equivalent is normally the minimum requirement for entry into the occupation. This passage of the *Handbook* indicates that a variety of educational backgrounds, including a high school diploma and several years of work experience, are sufficient minimum education for entry into the occupation, particularly those positions that include interviewing and recruiting duties such as the position proffered in this matter. *See id.* The *Handbook* reports that "the level of education and experience required to become a human resources specialist varies by position and employer." *Id.* As previously discussed, the petitioner's own claimed standards as stated in the record do not indicate that it requires a bachelor's degree in a specific specialty or its equivalent.

Further, the petitioner has characterized the proffered position as a Level I entry-level position. The *Handbook* states that most human resources specialists need at least a bachelor's degree; however, this statement does not support the view that *any* job in the field qualifies as a specialty occupation.

"Most" is not indicative that a particular position within the wide spectrum of human resources specialist jobs normally requires at least a bachelor's degree in a specific specialty, or its equivalent.¹⁶ More specifically, "most" is not indicative that a particular position normally requires at least a bachelor's degree in a specific specialty, or its equivalent, (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a particular position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).

Further, although the *Handbook* states that "most positions require that applicants have a bachelor's degree," the *Handbook* does not indicate that such a degree need be in a *specific specialty*. The *Handbook* notes that, for some positions, employers "prefer applicants who have a bachelor's degree in human resources, business, or a related field." A *preference* for a particular degree does not indicate a *requirement* for the same. See *Bob Huddleston State Farm Insurance Agency v. Holder*, No. 2:10-cv-02257-MMD-PAL, 2013 Dist. WL 1195519 (D. Nev. March 22, 2013) (upholding a denial of an H-1B petition, noting in part that the *Handbook's* indication that a baccalaureate degree may be *preferred* does not indicate that it is *required*). Even if the *Handbook* stated that such a degree was required (which it does not), the AAO again notes that a general degree in "business" is not considered to be a degree in a specific specialty. As previously discussed, although a general-purpose bachelor's degree, such as a degree in business or business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a baccalaureate or higher degree in a specific specialty or its equivalent that is directly related to the proposed position. Again, since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business or business administration, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558. Accordingly, as the *Handbook* indicates that working as a human resources specialist does not normally require at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation, it does not support the proffered position as qualifying as a specialty occupation.

In addition to asserting that the *Handbook* indicates that the proffered position is a specialty

¹⁶ For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions require at least a bachelor's degree in a specific specialty, it could be said that "most" of the positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a *normal minimum entry requirement* for that occupation, much less for the *particular position* proffered by the petitioner (which as noted above is designated as a Level I entry position in the LCA). Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Section 214(i)(1) of the Act.

occupation (which as discussed above, it does not), counsel asserts that the evidence provided from O*NET establishes that the proffered position qualifies as a specialty occupation. In response to the director's first RFE, in a letter dated October 12, 2012, counsel asserted that "O*NET indicates most Human Resources Specialist positions require a four-year Bachelor's Degree and employees usually need several years of work-related experience." In support of this assertion, counsel provided a printout of the O*NET OnLine Summary Report for the occupational category of Human Resources Specialists. Counsel again asserts in his May 15, 2013 brief that the O*NET printout demonstrates that the proffered position qualifies as a specialty occupation and provided an additional copy of the printout.

The AAO reviewed the report but finds that counsel's reliance on the O*NET Summary Report is misplaced. That is, O*NET assigns this occupation a Job Zone Four rating, which groups it among occupations that are described as follows: "[m]ost of these occupations require a four-year bachelor's degree, but *some do not*" (emphasis added). O*NET does not report that, for those occupations with an academic degree requirement, such a degree must be in a *specific specialty* directly related to the occupation. As previously discussed, USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the duties and responsibilities of the position. Further, as also previously explained, "most" is not indicative that a position normally requires at least a bachelor's degree in a specific specialty, or its equivalent, (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)), or that a position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). Notably, O*NET does not distinguish between the different levels within this occupation and indicates that some positions within the occupation do not require a four-year bachelor's degree, which could refer directly to Level I, entry-level positions such as that proffered in this matter.

Also in his letter dated May 15, 2013, counsel asserts that the Specific Vocational Preparation (SVP) level assigned to the occupation of Human Resources Specialists ("7.0 to < 8.0") indicates that the proffered position qualifies as a specialty occupation. In support of this assertion, counsel provided a printout from O*NET OnLine entitled "O*NET OnLine Help: Specific Vocational Preparation (SVP)." The printout states the following regarding SVP levels:

Specific Vocational Preparation, as defined in Appendix C of the *Dictionary of Occupational Titles*, is the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following

circumstances:

1. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
2. Apprenticeship training (for apprenticeable jobs only);
3. In-plant training (organized classroom study provided by an employer);
4. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
5. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level Time

1. Short demonstration only
2. Anything beyond short demonstration up to and including 1 month
3. Over 1 month up to and including 3 months
4. Over 3 months up to and including 6 months
5. Over 6 months up to and including 1 year
6. Over 1 year up to and including 2 years
7. Over 2 years up to and including 4 years
8. Over 4 years up to and including 10 years
9. Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Upon review of the above noted information, the AAO observes that an SVP rating of 7 to less than (" $<$ ") 8 does not indicate that at least a four-year bachelor's degree is required for an occupational category that has been assigned such a rating or, more importantly, that such a degree must be in a specific specialty directly related to the occupation. Rather, the SVP rating simply indicates that the occupation requires over 2 years up to and including 4 years of training of the wide variety of forms of preparation described above, including experiential training.¹⁷ Therefore, the information provided in the printout is not probative of the proffered position qualifying as a specialty occupation.

For the foregoing reasons, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or another objective and authoritative source, indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the requirements to perform the

¹⁷ An SVP rating of "7 to $<$ 8" is less than 8 and, thus, does not include "[o]ver 4 years up to and including 10 years."

duties of the proffered position as described by the petitioner in the record of proceeding do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record of proceeding regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or another objective and authoritative source, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement.

In support of the petitioner's assertion that the proffered position qualifies as a specialty occupation position, the record of proceeding contains job announcements and two opinion letters. Upon review of the evidence, however, the AAO finds that the petitioner's reliance on the job announcements and opinion letters to establish eligibility in this matter is misplaced.

In the Form I-129 petition, the petitioner described itself as a healthcare and recruitment and placement business. The petitioner further indicated that it was established in 2004, and that it has 47 employees. The petitioner stated its gross annual income as approximately \$5.4 million and net annual income as an approximate \$150,000 loss. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 561310 – "Employment Placement Agencies."¹⁸ The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

¹⁸ NAICS is used to classify business establishments according to type of economic activity, and each establishment is classified to an industry according to the primary business activity taking place there. See U.S. Dept of Commerce, U.S. Census Bureau, NAICS, on the Internet at <http://www.census.gov/eos/www/naics/> (last visited June 6, 2013).

This industry comprises establishments primarily engaged in listing employment vacancies and in referring or placing applicants for employment. The individuals referred or placed are not employees of the employment agencies.

See U.S. Dep't of Commerce, U.S. Census Bureau, 2002 NAICS Definition, 561310 – Employment Placement Agencies on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 6, 2013). The AAO notes that as of 2007, this type of business is listed under code 561311. See *id.*

The AAO notes that under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must establish that "the degree requirement is common to *the industry in parallel positions* among *similar organizations* [emphasis added]." This prong therefore requires the petitioner to establish that a requirement of a bachelor's degree (or higher) in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

For the petitioner to establish that organizations are similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such information, evidence submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and an organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner and counsel to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in the industry.¹⁹

- The first advertisement is for a position entitled "Recruiter, International." The position is advertised by [REDACTED], which describes itself as "[o]ne of America's premier heavy civil contractors" that "constructs quality highways, bridges, locks, dams, racetracks, and mass transit and airport systems in 20 states." The advertisement seeks "an experienced recruiter" to recruit individuals for "civil construction positions." The posting states that a "[b]achelor's degree is required; major specializing in Human Resources preferred." The AAO notes that the posting lacks information regarding the advertising organization's general

¹⁹ The AAO again notes that the petitioner's stated degree requirement is insufficient to establish that the proffered position qualifies as a specialty occupation, and here incorporates its earlier discussion on the issue.

characteristics. However, the AAO notes that the advertising company is a civil contractor and construction company, not an employment placement agency. Thus, the advertising company is not similar to the petitioner. Further, the position seeks a recruiter to fill the company's own positions. Thus, it is not a recruiter position that seeks to match prospective employees with client companies, like the proffered position. Thus, the position is not parallel to the proffered position. Most importantly, although the advertised position requires a bachelor's degree, it only expresses a *preference* for a degree in human resources. Thus, the posting does not indicate that a degree in a specific specialty is required.

- The second advertisement is for an international human resources officer at [REDACTED]. The advertising organization describes itself as "a global, humanitarian, nonprofit organization dedicated to saving lives and relieving suffering through health care training and relief and development programs." The AAO notes that the petitioner is not a nonprofit humanitarian organization. Thus, the organization is not similar to the petitioner. Further, the posting does not seek an individual to engage in employee recruitment. Rather, the advertisement seeks an individual who will "partner with international recruiters," and provide "guidance to field staff and managers regarding policies and procedures." Thus, the posting does not advertise a position parallel to the proffered position.
- The third advertisement is for a healthcare recruiter for [REDACTED] ([REDACTED]). The posting is devoid of information regarding the general characteristics of the advertising organization. Thus, the posting does not establish that it is for a similar organization to the petitioner. The responsibilities of the proffered position do not reflect international recruiting duties or recruitment for client companies. Thus, the advertised position does not appear to be parallel to the proffered position. Further, the AAO notes that the salary range for the advertised position is \$48,590 to \$72,884 per year. The AAO observes that this wage range spans the prevailing wages for a Level II, III, or IV position in Bend, OR for the relevant time period.²⁰ The AAO notes that a Level II position in Bend, OR starts at \$46,696 per year. Thus, the salary range of the advertised position suggests that it is more senior than the proffered position, which the petitioner designated at a Level I (entry level) wage. Further, the advertisement states that a "Bachelor's degree in Human Resources, Business Administration, or related field [is] preferred (equivalent education and experience will be considered)." The AAO notes that the advertisement expresses a *preference* for a particular type of degree, one of which is business

²⁰ For additional information regarding the prevailing wage for "Human Resources, Labor Relations, and Training Specialists, All Others" in Deschutes County (Bend, Oregon) see the All Industries Database for 7/2011 - 6/2012 for "Human Resources, Labor Relations, and Training Specialists, All Others" at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatcenter.com/OesQuickResults.aspx?code=13-1078&area=13460&year=12&source=1> (last visited June 6, 2013).

administration. The AAO here incorporates its prior comments regarding general-purpose degrees such as degrees in business or business administration, and again notes that to qualify as a specialty occupation, a position must *require* attainment of a bachelor's degree in a *specific specialty* or its equivalent. The AAO also notes that the advertising organization did not specify what combination of education and experience would be considered equivalent to the specified bachelor's degree.

- The fourth advertisement is for a manager of international recruitment. The advertising organization is described as a "Leading Consulting Firm" in the "Consulting" industry. No further information regarding the advertising organization was provided. Thus, the petitioner has not established that the posting organization is similar to the petitioner. The AAO observes that the advertised position seeks an individual who will "oversee two recruiters," among other duties. The AAO notes that the petitioner has not represented that the proffered position involves any supervisory duties. Further the advertised position requires a "[m]inimum 5 years of solid recruiting experience in a professional services environment" and "previous experience managing others." The AAO again notes that the proffered position was designated as a Level I (entry level) position. The advertised position appears to require substantial experience and involves managerial duties. Further, the AAO observes that the advertised position requires a "[m]inimum B.A./B.S." The AAO again reiterates its earlier comments regarding general-purpose degrees and notes that the advertised position falls short of stating a requirement for a bachelor's degree in a specific specialty or its equivalent.
- The fifth advertisement is for a healthcare recruiter. The posting states that the advertising organization is [REDACTED]. No further information regarding the advertising organization was provided. Thus, the AAO cannot ascertain from the record whether the organization is similar to the petitioner. The AAO notes that the description of the advertised position does not include international recruiting duties. Further, it appears that the responsibilities of the advertised position include only in-house recruiting duties. The description of the advertised position does not indicate that the individual hired will recruit employees for client companies. Thus, the advertised position does not appear to be parallel to the proffered position. In addition, the educational requirement for the advertised position is listed as "Bachelor's degree required." The AAO again notes that in order for a position to qualify as a specialty occupation, it must necessitate the services of an individual with at least a bachelor's degree in a specific specialty, or its equivalent, that is directly related to the duties of the position. The advertised position does not require a bachelor's degree in a *specific specialty*.
- The sixth advertisement is for a recruiter. The posting is devoid of information regarding the advertising organization. Further, the posting contains a very brief description of the proffered position such that the AAO is unable to ascertain

whether the advertised position is parallel to the proffered position. In addition, the posting indicates that the position requires a "[b]achelor's degree in human resources, business administration, or related field." The AAO again reiterates its prior comments regarding general-purpose degrees such as business or business administration, and notes again that a position must require a bachelor's degree or higher in a *specific specialty*, or its equivalent, that is directly related to the duties of the position to qualify as a specialty occupation.

- The seventh advertisement is for a healthcare recruiter at [REDACTED]. The advertising organization is described as a "premier healthcare system" with "six award-winning hospitals and more than 80 network locations throughout the Cincinnati area." The position appears to be located at [REDACTED]. The advertisement states that the "position will provide counseling, mentoring and consultative support to promote the retention and recruitment of professionals within all departments." The AAO notes that the organization is a provider of medical services, and is not an employment placement agency. Thus, it is not parallel to the petitioner in mission, and with six hospitals, it does not appear parallel in size to the petitioner, which describes itself on the Form I-129 as having 47 employees. The position advertised in this posting requires a bachelor's degree in healthcare, business, or a related field. The AAO again notes that by indicating that the advertised position can be performed by an individual with a general-purpose degree, i.e., a degree in business, the AAO notes that the position does not support the proffered position as qualifying as a specialty occupation for this reason as well.
- The eighth advertisement is for a healthcare recruiter. The advertising employer is Tenet, which states that "through its subsidiaries, [it] owns and operates acute care hospitals and numerous related health care services." The AAO notes that the advertising employer is a provider of medical services and appears to be advertising for an in-house recruiter. The posting does not indicate that the advertising company is engaged in contracting individuals to place at client companies. In addition, the description of the advertised position does not indicate that it involves any international recruiting duties. Thus, the advertised position does not appear to be parallel to the proffered position. Further, the advertised position requires a "Bachelor's degree from [an] accredited College or University in HR or business related field." The AAO notes that, as the advertised position can be performed with a degree in a "business related field," this advertisement is not probative evidence that a requirement for a bachelor's degree in a *specific specialty* or its equivalent is common to the petitioner's industry.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.

The advertisements provided establish, at best, that a bachelor's degree is often required, but not at least a bachelor's degree or the equivalent in a *specific specialty*. It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty or its equivalent is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from eight advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty or its equivalent (for organizations in the same industry that are similar to the petitioner), it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States.

In addition to the job advertisements, the petitioner submitted two opinion letters in support of the instant petition. As a preliminary matter, and as noted above, the term "recognized authority" means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. 8 C.F.R. § 214.2(h)(4)(ii). A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. *Id.*

The first opinion letter is [REDACTED], professor emeritus at [REDACTED]. The AAO reviewed the letter in its entirety. However, as discussed below, the letter from [REDACTED] is not persuasive in establishing the proffered position as qualifying as a specialty occupation position.

[REDACTED] submitted his curriculum vitae; however, he did not provide any further supporting documentation to establish his credentials as a recognized authority on the relevant educational requirement for the proffered position.

[REDACTED] curriculum vitae indicates that he has served in various positions at [REDACTED] from 1978 to the present (professor emeritus since 2003; associate dean and director of international programs, school of business from 1999 to the present; and professor of business from 1978 to the present).²¹ Based upon the information provided, the vast majority of [REDACTED]

²¹ [REDACTED] curriculum vitae is dated September 2007. In his letter, he indicates that his "current position at

experience, including his current work, is in the academic setting. In addition, the professor states that he has authored articles, which have been published in the journals regularly read by professionals in this industry. According to his curriculum vitae, [REDACTED] most recent "publication or other creative achievement" was in 1995 when he contributed a chapter to a book regarding academic initiatives. His most recent presentation at a professional conference was in 1993. His most recent honor was in 1997 for teaching.²²

In the letter, [REDACTED] provides his opinion on the educational requirements for the proffered position. [REDACTED] states that the petitioner's educational requirement for the proffered position, which he describes as "a bachelor's degree or equivalent," is "quite appropriate." He further states that "the position of International Recruiter, as described, would be a specialty occupation requiring an in-depth theoretical and practical knowledge and require the attainment of a bachelor's degree or higher." He asserts that "a Bachelor's degree or equivalent in Business, Human Resources, or related" would be the "most appropriate degree."

The AAO observes that [REDACTED] states in his letter that his "opinions are limited to the information that [he] received and [his] educational and professional experience and judgment." [REDACTED] indicates that he reviewed the following documents regarding the proffered position:

1. A petition letter to the USCIS dated April 10, 2012 from [the petitioner's executive vice president; and]
2. A Job Description form the position of International Recruiter (International Recruitment Manager). The duties and responsibilities of the position are given along with the percentage of time to be devoted to each set of tasks.

Upon review of [REDACTED] opinion letter, there is no indication that he possesses any knowledge of the petitioner's business operations and the proffered position beyond the information contained in the documentation he listed as having reviewed. In addition, [REDACTED] does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. Notably, [REDACTED] states that "[i]t is widely regarded that the minimum requirements for being employed in a position such as International Recruiter in resort operations would be a bachelor's degree or equivalent in Business, Human Resources, Communications or related field." [REDACTED] does not explain the relevance of "resort operations" to the instant petition. In addition, [REDACTED] indicates by this statement that a general degree in business is sufficient for entry into the occupation.

[REDACTED] is Professor Emeritus in the School of Business." He indicates that he "continue[s] to teach courses in accounting and finance and serve on doctoral student's [sic] dissertation committees."

²² The petitioner provided [REDACTED] eleven page curriculum vitae. Aside from his current employment with [REDACTED] there are three entries that are dated within five years of the advisory opinion, including a semester at sea voyage during the spring of 2006; serving as an adjunct professor in France during the summers until 2007; and serving as a faculty consultant for a foundation until 2007. The vast majority of entries on [REDACTED] curriculum vitae are from the 1980's and early 1990's.

Further, [REDACTED] states that the "nature of the duties [of the proffered position] are sufficiently complex and involve so many technical aspects of healthcare staffing, that firms similar in nature to [the petitioner] would require someone was very specialized skills to serve as their International Recruiter." [REDACTED] further asserts that "[i]t is highly unlikely that such a position would be offered to someone without this level of specialized knowledge." Thus, it must be noted that there is no indication that the petitioner and counsel advised [REDACTED] that the petitioner characterized the proffered position as a Level I (entry level) position on the LCA, which indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. Moreover, without this information, the petitioner has not demonstrated that [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine the minimum education necessary for entry into the particular position based upon its likely job duties and responsibilities.

In any event, based upon the information provided, [REDACTED] has not established that his education, training, skills or experience have provided him with expertise or specialized knowledge of the current requirements in the industry for international recruiter positions (or parallel positions) among healthcare recruitment and placement companies that are similar to the petitioner. That is, there is no specific information in the record regarding [REDACTED] claimed expertise on the issue here, i.e., the hiring practices and recruitment of international recruiters (or parallel positions) with healthcare recruitment and placement businesses (or similar organizations).

[REDACTED] asserts a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, he does not provide a substantive, analytical basis for his opinion and ultimate conclusion. His opinion does not relate his conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for his assertions regarding the educational requirements for the particular position here at issue. Accordingly, the very fact that he attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion. For example, there is no evidence that [REDACTED] has personal knowledge of the petitioner's operations gained through such means as visiting the petitioner's business, observing the petitioner's employees, interviewing them about the nature of their work, or documenting the knowledge that they apply on the job. Overall, he has not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty, or its equivalent. [REDACTED] does not provide sufficiently substantive and analytical bases for his opinion.

The second letter is from [REDACTED], professor of marketing and associate dean and director of graduate programs at [REDACTED] submitted a curriculum vitae; however, no other documentation to establish his credentials as a recognized authority on the relevant educational requirement for the proffered position was provided. Notably, [REDACTED] curriculum vitae does not reflect that he has published any works or presented any academic presentations on the topics of human resources or international recruitment. [REDACTED] experience

is almost exclusively focused on the field of marketing. Moreover, although [REDACTED] indicates that he "believe[s] that [he] would qualify as a Recognized Authority in the specialty occupation described in this letter," he further indicates that he has completed "well over 500 professional evaluations for USCIS and DOL," "most of which have been in the field of marketing." [REDACTED] does not indicate on what basis he would be considered a recognized authority in the fields of human resources or international recruiting.

[REDACTED] states that in formulating his opinion for the letter, he reviewed "the proposed International Recruiter position description and information about the company provided by [the petitioner]." Notably, the only information in the letter regarding the petitioner's business operations is the following statement: "[The petitioner] is a workforce solutions provider for the healthcare industry. It provides staffing and human resources management services. It is seeking to grow further and to effectively provide its services." Upon review of the opinion letter, there is no indication that [REDACTED] possesses any knowledge of the petitioner's proffered position and its business operations beyond this general information. Similar to [REDACTED] letter, there no evidence that [REDACTED] has any in-depth knowledge of the petitioner gained through such means as visiting the petitioner's business, observing the petitioner's employees, interviewing them about the nature of their work, or documenting the knowledge that they apply on the job. Overall, he does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. The very fact that he attributes various attributes to such a generalized treatment of the proffered position undermines the credibility of his opinion.

[REDACTED] indicates that, in addition to the description of the proffered position, he also reviewed "the position duties and qualifications for Human Resources Specialists contained in the Occupational Outlook Handbook, [O*Net], and job requirements in announcements for similar positions." Based on this information, his above noted knowledge of the petitioner's business operations, and his academic and professional experience, [REDACTED] concludes that "[the proffered position] is clearly a specialized Human Resources Specialist position of strategic importance for [the petitioner] and qualifies as a specialty occupation." [REDACTED] analysis is based, in part, on the belief that "[the proffered position] requires a sophisticated understanding of staffing, human resources, consulting, healthcare occupations, and management." Thus, it appears that [REDACTED] was also not aware that the petitioner designated the proffered position as a Level I (entry level) position, which indicates that the beneficiary is only required to have a basic (not "sophisticated") understanding of the occupation. Further, [REDACTED] does not explain how he arrived at the conclusion that the proffered position is one of "strategic importance" for the petitioner's business operations, given his apparent limited knowledge of the petitioner's business operations. It is not evident that [REDACTED] is aware or was informed that, as a Level I (entry level) position, the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment, and that she will be closely supervised and her work closely monitored and reviewed for accuracy.

In the letter, [REDACTED] states that "[p]arallel International Recruiter positions in similar organizations routinely recruit and employ individuals with at least a Bachelor's Degree or equivalent in Business, Human Resources, Communications, or related field." He lists three

position postings by indicating the job title, the name of the advertising organization, and the requirements of the positions. Notably, two of the positions require "a bachelor's degree" and additional experience. As previously discussed, the relevant inquiry is whether a bachelor's degree in a *specific specialty* is common in the petitioner's industry among parallel position is similar organizations. A requirement for a general-purpose bachelor's degree is not sufficient to qualify a position as a specialty occupation. One of the positions cited by [REDACTED] is for a "Senior Recruitment Specialist," requiring a bachelor's degree in human resources and "5 to 7 years of experience." Again, the AAO notes that it does not appear that [REDACTED] is aware that the petitioner designated that proffered position as a Level I (entry level) position on the LCA. A "senior" position requiring five to seven years of experience in addition to a bachelor's degree, is not parallel to the proffered position, which as a Level I position, requires only a basic understanding of the occupation. Furthermore, as previously discussed, to establish that an organization is similar, the petitioner must demonstrate the advertising organization shares the same general characteristics with the petitioner. Without such evidence, documentation submitted is generally outside the scope of consideration, which encompasses only organizations that are similar to the petitioner. Here, [REDACTED] does not provide sufficient information regarding the advertising organizations to conduct a legitimate comparison of the organizations.²³ Thus, the documentation does not meet this prong of regulation.

It appears that both [REDACTED] have based their assessments on incomplete information regarding the proffered position. Without this information, the petitioner has not demonstrated that [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities.

Furthermore, the AAO notes that, while [REDACTED] may, in fact, be recognized authorities on various topics, they have failed to provide sufficient information regarding the basis of their claimed expertise on this particular issue. Neither their self-endorsement nor their resumes establish their expertise pertinent to the recruiting and hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how their education, training, skills or experience would translate to expertise or specialized knowledge regarding the *current recruiting and hiring practices* of healthcare and recruitment placement businesses similar to the petitioner for international recruiter positions.

Moreover, there is no indication that [REDACTED] have published any work or conducted any research or studies pertinent to the educational requirements for international recruiters in the petitioner's industry for similar organizations; nor is there any indication in the record of either's recognition by professional organizations as authorities on those specific requirements. The opinion letters contain no evidence that they were based on scholarly research

²³ [REDACTED] references three URLs for the job postings. However, he did not submit printouts of the job postings. If the professor wished for the director and the AAO to review the information he should have provided printouts of the job postings. The director and the AAO are not required to attempt to locate the various job postings by searching the Internet for these links. Notably, the content of the links may have changed since [REDACTED] accessed the sites.

conducted by [REDACTED] in the specific area upon which they are opining. In reaching their conclusions, they provide no documentary support for their assertions regarding the education required for the position (e.g., statistical surveys, authoritative industry or government publications, or professional studies). They assert a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncements. Notably, they failed to provide the basis for their conclusions supported by copies or citations of any research material used.

The AAO may, in its discretion, use as advisory opinions or statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of its discretion the AAO discounts the advisory opinion letters as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letters into its analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Thus, based upon a complete review of the record of proceeding, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, for the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In his letter dated May 15, 2013, counsel asserts that the proffered position "is highly specialized in nature," and qualifies as a specialty occupation under this prong of the regulations because it involves "specialized and complex duties [that are] not encompassed in the Recruitment Specialist role" as described in the *Handbook*. In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its business operations. For example, the petitioner submitted printouts from its website and tax returns. The petitioner also submitted opinion letters from [REDACTED] as discussed at length above. The AAO reviewed the record of proceeding in its entirety. However, upon review of the record, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of international recruiter.

A review of the record of proceeding indicates that the petitioner has failed to credibly demonstrate the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Additionally, the AAO finds that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a

specific specialty, or its equivalent. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition, which indicates a Level I (entry level) wage. Without further evidence, it is not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."²⁴ Such a higher-level position would command a minimum prevailing wage at that time of \$67,517.²⁵

The petitioner failed to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor's degree in a specific specialty, or its equivalent. Thus, based upon the record of proceeding, including the LCA, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed a baccalaureate program in a specific discipline or its equivalent that directly relates to the proffered position. Specifically, the petitioner fails to demonstrate how the duties of the position as described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

The AAO observes that the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed or equivalent individual could perform them. While counsel asserts that the proffered position encompasses duties beyond the limited description of "recruitment specialist" contained in the *Handbook*, the duties of the proffered position are substantially encompassed by the duties listed in the *Handbook* under the occupational category of human resources specialists, as described above, and for which a bachelor's degree in a specific specialty is not normally required. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

²⁴ For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

²⁵ For additional information regarding the prevailing wage for "Human Resources, Labor Relations, and Training Specialists, All Others" in Hamilton County (Cincinnati, Ohio), see the All Industries Database for 7/2011 - 6/2012 for "Human Resources, Labor Relations, and Training Specialists, All Others" at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatabasecenter.com/OesQuickResults.aspx?code=13-1078&area=17140&year=12&source=1> (last visited June 6, 2013).

The AAO observes that the petitioner has indicated that the beneficiary's educational background and prior work experience will assist her in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. In the instant case, the petitioner does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner failed to demonstrate that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Consequently, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, and where applicable, the AAO reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. See *Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must therefore show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See

generally Defensor v. Meissner, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

As discussed at length above, in the instant case, the petitioner has not demonstrated that it requires a bachelor's degree in a specific specialty to perform the duties of the proffered position. In its initial letter of support, dated April 12, 2012, the petitioner described the minimum requirements for the proffered position as "a Bachelor's degree or equivalent." In response to the RFE, the petitioner provided a document entitled "Job Description" for the proffered position, which indicates that the minimum education requirement for the proffered position is a "4 Year degree in Business, Human Resources or Communications and/or possess relevant experience." In response to the director's second RFE, the petitioner submitted an affidavit from the petitioner's director of international recruitment, in which she states that the "experience requirement is meant as an indication that [the petitioner] will accept the equivalent of a U.S. bachelor's degree where a credentialing agency has reviewed the applicant's education and/or experience and found it to be equivalent to a U.S. bachelor's degree . . . or greater."

As explained above, the AAO finds that these statements do not indicate that the petitioner requires a bachelor's degree or *its equivalent* as contemplated by statutory and regulatory guidelines. First, the petitioner's initial attestations indicate that only a general bachelor's degree is required, not a bachelor's degree in a specific specialty or its equivalent. Second, with regard to baccalaureate equivalencies, the petitioner provided a job description which indicates that the petitioner will accept an unspecified amount of "relevant experience" in lieu of a degree. The petitioner later represented that the amount of "relevant experience" deemed sufficient to perform the duties of the proffered position would be the amount determined by a "credentialing agency" to be equivalent to a bachelor's degree. The petitioner did not indicate what standard would be used by such a credentialing agency to determine equivalency, or provide any examples of past instances where an evaluation of a prospective employee's work experience had been accepted in lieu of education. As described earlier in this decision, the petitioner's use of a credentialing agency to determine equivalency of work experience does not indicate that it requires a bachelor's degree in a specific specialty or *its equivalent* as defined by federal regulations. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (outlining the specific rubric used to determine the educational equivalency of work experience).

The petitioner also submitted advertisements for two different positions with the petitioner. In his May 15, 2013 letter, counsel acknowledges that "[t]hese positions are not identical to [the proffered position]." The AAO cannot consider evidence regarding the requirements for *other positions* to be probative regarding the proffered position at issue here.

In its letter dated April 10, 2012, filed in support of the initial Form I-129 petition, the petitioner "attests that it has not hired any individuals in the [proffered position] who did not have, at a minimum, a Bachelor's Degree or equivalent." Again, this claimed requirement is not for a bachelor's degree in a specific specialty. Even if it was, the petitioner did not provide any evidence regarding the educational background of other individuals who have held this position, nor did it provide copies of job postings for the proffered position. The petitioner did not state the total number of people who currently or in the past have served in the international recruiter position, which according to the petitioner, does not appear to be a new position.

The petitioner stated in the Form I-129 petition that it has 47 employees and that it was established in 2004 (approximately eight years prior to the H-1B submission). The evidence submitted (including job postings for other positions, and a statement by the petitioner regarding its hiring requirements) is not persuasive in establishing that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position.

Upon review of the record, the petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

In his May 15, 2013 letter, counsel asserts that "[t]he uniqueness and complexity of [the proffered position] lies in the mix of specialized fields," and indicates that "the international recruitment and hiring feature and healthcare industry requirements, require a higher level of skill" than the recruitment specialist position described in the *Handbook*. The AAO acknowledges that the petitioner and counsel believe that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. Based on a thorough review of the documentation submitted by the petitioner (including printouts from its website, tax documents, and opinion letters), however, the AAO finds that the petitioner fails to establish that the proffered position qualifies as a specialty occupation under this criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

The AAO notes that while counsel indicates that the beneficiary is required to "manage" various processes, including the licensing of healthcare professionals, the evaluations of candidates' foreign credentials, and the immigration of the candidates to the U.S., it is not obvious that "managing" such processes involves specialized and complex skills. The AAO notes that the duties of the proffered position provided by the petitioner indicate that the beneficiary will "[c]ollaborate with licensing, immigration, records, and quality assurance staff members to ensure effective and timely

processing for placed health professionals." Thus, the petitioner has designated that other staff members are largely responsible for the duties that counsel describes as specialized and complex.

Furthermore, the AAO reiterates its earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category of "Human Resources Specialists," and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, as previously mentioned, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The director's decision will be affirmed, and the petition will be denied for this reason.

IV. Conclusion and Order

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision.

As a final note, the AAO observes that in his March 15, 2013 letter, counsel indicates that "[i]n March 2012, the 6th Circuit, which is the Petitioner's Circuit, found that the Service's specialty occupation analysis is too narrow." The AAO notes that the case to which counsel refers, *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), was not decided by the Sixth Circuit as counsel suggests, but rather by the United States District Court, Southern District of Ohio, Eastern Division. Regardless, the AAO notes the myriad deficiencies of the instant petition and finds neither the arguments presented in that case, nor the outcome, to be determinative here. Further, counsel has not established the relevancy of that case and has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.²⁶ The AAO also notes that, in

²⁶ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. The AAO further notes that the

contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

As previously mentioned, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025 at 1043, *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 145 (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The director's decision is affirmed. The petition is denied.

service center director's decision was not appealed to the AAO. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, the AAO may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by the AAO in its *de novo* review of the matter.